

### § 4905.3

requirements or adjudicating disputes or controversies, including arbitration, mediation, and other similar proceedings.

*Special government employee* means an employee of the PBGC who is retained, designated, appointed or employed to perform, with or without compensation, for not to exceed one hundred and thirty days during any three hundred and sixty-five consecutive days, temporary duties either on a full-time or intermittent basis (18 U.S.C. 202).

#### § 4905.3 General.

No PBGC employee or former employee may appear in any proceeding to which this part applies to testify and/or produce documents or other material unless authorized under this part.

#### § 4905.4 Appearances by PBGC employees.

(a) Whenever a PBGC employee or former employee is requested or served with compulsory process to appear in a proceeding to which this part applies, he or she will promptly notify the General Counsel.

(b) The General Counsel or his or her designee will authorize an appearance by a PBGC employee or former employee if, and to the extent, he or she determines that such appearance is in the interest of the PBGC.

(1) In determining whether an appearance is in the interest of the PBGC, the General Counsel or his or her designee will consider relevant factors, including:

(i) What, if any, objective of the PBGC (and, where relevant, any federal agency, if the United States is a party) would be promoted by the appearance;

(ii) Whether the appearance would unnecessarily interfere with the employee's official duties;

(iii) Whether the appearance would result in the appearance of improperly favoring one litigant over another; and

(iv) Whether the appearance is appropriate under applicable substantive and procedural rules.

(2) If the General Counsel or his or her designee concludes that compulsory process is essentially a request for PBGC record information, it will be treated as a request under the Freedom

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of Information Act, as amended, in accordance with part 4901 of this chapter, except to the extent that the Privacy Act of 1974, as amended, and part 4902 of this chapter govern disclosure of a record maintained on an individual.

(c) If, in response to compulsory process in a proceeding to which this part applies, the General Counsel or his or her designee has not authorized an appearance by the return date, the employee or former employee shall appear at the stated time and place (unless advised by the General Counsel or his or her designee that process either was not validly issued or served or has been withdrawn), accompanied by a PBGC attorney, produce a copy of this part of the regulations, and respectfully decline to provide any testimony or produce any documents or other material. When the demand is under consideration, the employee shall respectfully request that the court or other authority stay the demand pending the employee's receipt of instructions from the General Counsel.

#### § 4905.5 Requests for authenticated copies of PBGC records.

The PBGC will grant requests for authenticated copies of PBGC records, for purposes of admissibility under 28 U.S.C. 1733 and Rule 44 of the Federal Rules of Civil Procedure, for records that are to be disclosed pursuant to this part or part 4901 of this chapter. Appropriate fees will be charged for providing authenticated copies of PBGC records, in accordance with part 4901, subpart D, of this chapter.

#### § 4905.6 Penalty.

A PBGC employee who testifies or produces documents or other material in violation of a provision of this part of the regulations shall be subject to disciplinary action.

### PART 4906 [RESERVED]